

No. 9/5/84-6 Lab./1147.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of Haryana Roadways, Faridabad.

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 282 of 1983

between

SHRI RAM CHANDER, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS,
FARIDABAD

Present:—

Shri Bhim Singh Yadav, for the workman.

Shri Jagbir Singh, for the respondent-management.

AWARD

This reference No. 282 of 1983 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/96-83/48958--63, dated 19th September, 1983, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute existing between Shri Ram Chander, workman and the respondent management of Haryana Roadways, Faridabad. The terms of the reference was :—

Whether the termination of service of Shri Ram Chander is justified and in order ? If not, to what relief is he entitled ?

According to the claim statement the claimant was appointed in May, 1969 at Gurgaon depot. He was transferred to Faridabad depot w.e.f. 1st April, 1981 but he did not join duty on 1st April, 1981. The claimant sent letters to the General Manager, Haryana Roadways, Gurgaon and Faridabad that he was not being given duty either at Gurgaon or Faridabad. Two chargesheets were issued to the claimant, dated 16th September, 1981 and 22nd September, 1981 which were duly replied. Enquiry Officer was appointed who fixed the dates as mentioned in Para No. 5. The claimant appeared on 31st January, 1983, but the enquiry report, is dated 14th January, 1983. The documents were not admitted. The claimant were not given the copies of the enquiry proceedings. The claimant also received show cause notice. He submitted his reply on 24th January, 1983, but his services were terminated on 16th February, 1983. It is alleged that the orders of termination is illegal.

The management has contested the claim statement. It is alleged that the claimant did not join duty on his transfer from Gurgaon to Faridabad. He joined duty on 21st September, 1982. Chargesheets were issued to the claimant. Proper enquiry was conducted and full opportunity was given to him and the order of termination is legal and valid.

The claimant also filed the rejoinder denying the averments of the respondent. The claim was contested on the following issue :—

(1) As per reference ?

I have heard the arguments of both the parties and gone through the evidence on record. My findings on the issue is as under :—

Issue No. 1 :

Chargesheet Ex. M-1 was given to the claimant, dated 22nd September, 1982. According to the chargesheet the claimant was called upon to reply his absence from 1st April, 1981 to 20th September, 1982. The reply of the claimant is Ex. W-2 which is dated 29th September, 1982. He has stated that he remained ill from 1st April, 1981 to 31st April, 1981. He reported to Shri Bal Kishan but he did not join his duty. He continuously reporting for duty but he did not join duty. His period upto 20th September, 1982 was spent in this way and he is not at fault. This reply shows that the claimant was absent from duty from 1st April, 1981 to 31st April, 1982 without any leave application. He has stated that he was ill but he did not produce any medical certificate before the Enquiry Officer. He has also not produced any such medical certificate in this court. I have also perused the statement of MW-1 Shri Jage Ram, who has produced Ex. M-1 to M-7. I have also gone through the evidence of Shri R.K. Tarjeja, who was the enquiry officer. His enquiry report is Ex. M-1. I have also gone through the evidence of the workman WW-1. It is clearly made out that the claimant remained absent from 1st April, 1981 to 20th September, 1982. He has not been able to explain his long absence. In his reply to the chargesheet he has also stated that he remained ill from 1st April, 1981 to 30th April, 1981. But no medical certificate has ever been produced, neither any application for leave was sent to the management. Hence the order of termination of his services was legal and valid. Taking into consideration that the claimant is an old employee of the respondent and

his poorness and he has to support him and his family. I give benefit of section 11-A to the claimant and order his reinstatement without any back wages, but with continuity of service.

The reference is answered accordingly.

Dated the 23rd January, 1985.

R.N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 213, dated the 30th January, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

No. 9/5/84-6Lab./1324.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Eicher Good Earth Limited, 59, Industrial Township, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference Nos. 62 to 92/1983

between

Sarvshri—

- (1) DIGAMBER SINGH,
- (3) BALBIR II,
- (5) HARI BAHADUR,
- (7) KISHAN SINGH,
- (9) DIN DAYAL,
- (11) PREM CHOPRA,
- (13) JAWAHAR SINGH,
- (15) UMED SINGH,
- (17) BHARAT SINGH,
- (19) PRABHUJI,
- (21) SURJA RAM,
- (23) DWARIKA PARSHAD,
- (25) BALBIR SINGH III,
- (27) AMAR SINGH,
- (29) NATHAL SINGH,
- (31) NAR PAL

Sarvshri—

- (2) PREM SINGH,
- (4) SURENDER SINGH,
- (6) MUL CHAND,
- (8) BABU RAM,
- (10) YESH PAL SINGH,
- (12) VERINDER SINGH,
- (14) MAHAVIR,
- (16) RAM BAHADUR,
- (18) PARTAP SINGH,
- (20) AMIR CHAND,
- (22) KHADAK BAHADUR,
- (24) RAJENDER,
- (26) BALBIR I,
- (28) KUTTAN,
- (30) PREM LAL, AND

AND THE MANAGEMENT OF M/S EICHER GOOD EARTH LIMITED, 59, INDUSTRIAL TOWNSHIP, FARIDABAD

Present:—

Shri R.L. Sharma, for the workmen.
Shri R.C. Sharma, for the Management.

AWARD

This award would dispose of 31 consolidated references bearing Nos. 62 to 92 of 1983. These references were consolidated on the request of both the parties on 30th August, 1984 because common questions of law and facts were involved therein. Main proceedings have been held in reference No. 62 of 1983 (Shri Digamber Singh *Versus* Eicher Good Earth Limited, 59, Industrial Township, Faridabad).

2. In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Sarvshri (1) Digamber Singh, (2) Prem Singh, (3) Balbir-II, (4) Surender Singh, (5) Hari Bahadur, (6) Mul Chand, (7) Kishan Singh, (8) Babu Ram (9) Din Dayal, (10) Yesh Pal Singh, (11) Prem Chopra, (12) Verinder Singh, (13) Jawahar Singh, (14) Mahavir, (15) Umed Singh, (16) Ram Bahadur, (17) Bharat Singh, (18) Partap Singh, (19) Prabhuji, (20)

Amir Chand, (21) Surja Ram, (22) Khadak Bahadur, (23) Dwarika Parshad, (24) Rajender (25) Balbir Singh-III, (26) Balbir-I, (27) Amar Singh, (28) Kuttan (29) Nathal Singh, (30) Prem Lal and (31) Nar Pal and the Management of M/s Eicher Goodearth Limited, 59, Industrial Township, Faridabad, to this Tribunal, for adjudication regarding termination of their services.

3. Notices were issued to both the parties. In the claim statement dated 16th July, 1982, it was alleged that the claimants were engaged since 1980 in the respondent factory as workmen on different jobs, but their services were illegally terminated with effect from 16th July, 1982 and as such they were entitled to reinstatement with full back wages.

4. The respondent company in its written statement filed on 7th April, 1983, pleaded that the claimants never remained in the employment of the respondent concerned as such there was no relationship of master and servant between the parties. It was further pleaded that the claimants worked with the canteen contractor Shri J.D. Jaswani from 17th January, 1982 to 8th July, 1982 and that the contractor had left the job and had paid all the dues to the workers. It was further pleaded that the claimants were not entitled to any relief from the respondent.

5. In the rejoinder dated 1st May, 1984, the claimants reiterated the pleas taken by them in the demand notice.

6. On the pleadings of the parties, the following issues were framed on 29th May, 1984:—

(1) Whether there was no relationship of master and servant between the claimants and the management? If so, to what effect? O.P.M.

(2) Whether the termination of services of the workmen was justified and in order? If not, to what relief are they entitled?

7. It may be mentioned that the Management has examined two witnesses and documents, M-1 to M-12, have been tendered into evidence. The workmen have examined two witnesses. After going through the evidence, both oral and documentary, and hearing the representatives of both the parties, my findings on the above issues are as under:—

8. The Management had examined Shri Nater Pal Singh, Asstt. Personnel Officer who stated that their factory manufactured tractors and that the canteen in the factory premises was being run through the contractors because the Union and the workers had adopted this system. He further stated that Shri J.D. Jaswani was the canteen contractor and that all the claimants were the employees of the said contractor. He then stated that the contractor used to pay the wages to his employees and Labour Inspector inspected the canteen and filed a complaint before the Authority under the Minimum Wages Act against the contractor. Ex. M-2 was the notice issued by the said Authority, while Ex. M-3 was the copy of the application made before that authority and Ex. M-4 contained the list of workers. He also stated that Ex. M-5 was the reply given by the representative of the factory in these proceedings. He then stated that documents Ex. M-6 and M-7 were received from the Labour Inspector, when they appeared in the conciliation proceedings and filed their comments copy Ex.-M-8 and that Ex.M-9 and M-10 were the conciliation reports. He further stated that some workmen had settled their disputes with Shri J.D. Jaswani,—vide settlements Ex-M-11 and M-12 in his presence, when 20 claimants affixed their signatures on the said settlement. He then stated that Shri J.D. Jaswani had left the canteen of the respondent factory after about 6/7 months in the year 1982 and he terminated the services of claimants and that the respondent company had no relationship with the claimants. MW-2 Shri J.D. Jaswani stated that Ex. M-1 was the copy of the agreement, which was executed by him with the respondent company. He further stated that canteen was run by him for 5/6 months and that the respondent company used to give subsidy to him at the rate of 28,000 per month so that he could supply tea etc. at cheaper rate. He further stated that he suffered losses and left the job and had settled the accounts of his employees and obtained documents Ex. M-11 and M-12 in that respect. He further stated that he had settled the accounts of all the workmen, when he left the job.

9. WW-1 Shri Narpal deposed that he joined the services of the respondent company in 1980 and was turned out by the Management on 16th July, 1982. He further stated that he was employed by the company and not by contractor and was unemployed even now. He further stated that about 35 workmen were turned out by the Management and their accounts were neither settled or nor any amount was paid to them and that the canteen was being run even now. WW-2 Shri Babu Ram stated that he joined service in the respondent company in 1980 and was employed by the company and not by any contractor. He further stated that he along-with 35 workmen was turned out by the respondent and that the canteen was being run even now. He also stated that he was unemployed these days.

10. A perusal of the above evidence would show that Shri Nater Pal Singh, Asstt. Personnel Officer of the respondent company (MW-1), has deposed that claimants were the employees of Shri J. D. Jaswani, Contractor and that the respondent company had not employed them. Documents Ex.M-1 to M-12 have been proved by this witness. Shri J.D. Jaswani, MW-2 has deposed that canteen was run by him because he took

the contract.—*vide* agreement Ex.M-1 and that accounts of all the workmen were settled by him, when he left the job. In the agreement Ex. M-1 dated 23rd December, 1981, it is recited that Shri J.D. Jaswani was given the contract to run the canteen by the respondent company. In para No. 2 (k) of this agreement, it is recited that it was the responsibility of the contractor to employ the requisite number of staff members for running the canteen smoothly. In para No. 4 (b) of this agreement, it is recited that this document does not create any employee and employer's relationship between any of the contractor's employees and the company. In the documents, Ex. M-2, M-3, M-5, M-6, Shri Jaswani has been described as canteen contractor. The management took the plea before the Authority under the Payment of Wages Act, Faridabad, that canteen was being run by the Contractor and that the claimants were the employees of the contractor and not the company. In conciliation proceedings copies Ex. M-9 and M-10, the same plea was taken by the respondent company. Ex. M-11 and M-12 are the settlements, in which it is recited that 20 employees of the canteen had settled their accounts with Shri J. D. Jaswani, Contractor. WW-1 Shri Narpal has admitted in cross examination that the document Ex. M-11 was signed by him in Urdu and that the other workmen had signed this document in his presence. When the testimony of Shri Netar Pal Singh (MW-1) and MW-2 Shri J.D. Jaswani is taken into consideration along with documents, Ex.M-1 to Ex.M-12, one reaches to the conclusion with Shri J.D. Jaswani was the contractor of the canteen and that the claimants were the employees of Shri J.D. Jaswani, contractor and not the respondent company. The oral testimony of WW-1 Shri Narpal and WW-2 Shri Babu Ram to the effect that they were the employees of the company and not the contractor, is without any force because no documentary evidence has been produced by them to show that they were appointed by the company. No attendance cards have been produced by them to show that their presence was marked by the company. There is no documentary evidence from their side that they were paid wages by the respondent company. On the other hand, WW-1 Shri Narpal Singh admitted his signatures and also the signatures of other workmen on the document, Ex.M-11, which is the settlement, containing the recital that 18 employees of the canteen had settled their accounts with Shri J.D. Jaswani contractor. WW-1 Shri Narpal Singh stated in cross-examination that Shri J.D. Jaswani and prior to him many contractors had changed, but the workmen remained on duty. He further stated that Shri J. D. Jaswani was not a contractor but a supervisor. His oral testimony does not carry any weight because in the agreement Ex. M-1, the contract to run the canteen was given to Shri J.D. Jaswani. In the other documents, he has been described as contractor. Even in the document Ex.M-11 he has been described as contractor and this document was signed by WW-1 Shri Narpal Singh. Consequently, the documentary evidence produced by the respondent shows that Shri J.D. Jaswani was the canteen contractor. The question for determination in this reference is whether the canteen was being run by the contractor or by the company. The question whether the system adopted by the respondent company to run the canteen on contract is a desirable one or not is not in issue in this reference because no such plea has been taken by either side in the pleadings and as such no finding can be given in that respect. It was argued on behalf of the claimants that they were in service since 1980, while Shri J.D. Jaswani come in the month of December, 1981 and as such they were not the employees of Shri J. D. Jaswani. It has come in evidence that prior to Shri J.D. Jaswani canteen was being run by other contractors and WW-1 Shri Narpal Singh admitted in cross-examination that prior to Shri J.D.Jaswani, many contractors had changed hands. Therefore, the plea of the claimants that Shri J.D. Jaswani, was a supervisor cannot be accepted because the respondent company has led oral as well as documentary evidence to show that Shri J.D. Jaswani was the contractor and the claimants were his employees. Consequently, the respondent company has succeeded in proving that there was no relationship of employer and employee between the claimants and respondent company. Issue No. 1 is accordingly decided in favour of the respondent company.

Issue No. 2 :

In view of my finding on issue No. 1 to the effect that the claimants were not the employees of the respondent company, the question of termination of their services by the respondent does not arise and as such the claimants are not entitled to any relief against the respondent company. The award is passed accordingly.

Dated the 15th February, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 154, dated the 15th February, 1985

Forwarded (four copies) to the Commissioner, & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.